

**Comments on the Proposed Guide for Environmental Management Systems  
and the National Environmental Policy Act**

**Virginia Department of Transportation  
August 29, 2006**

The Virginia Department of Transportation is providing comments to the July 17, 2006 Federal Register Notice on Proposed Guide on Environmental Management Systems and the National Environmental Policy Act.

The premise for the proposed guide is to "modernize" the implementation of NEPA and make the NEPA process more "effective and efficient". We do not believe the integration of NEPA with federal agency EMSs would achieve either goal, moreover, no other tangible benefits appear evident.

The 2000 Executive Order 13148 (Greening the Government Through Leadership in Environmental Management) directed federal agencies to implement EMSs at all "appropriate facilities". As applied to typical "facility" functions, EMSs reduce environmental impacts by establishing a top-down supported system of accountability, resource commitment (e.g. training, equipment, etc.), operational controls, targets, measurements and continual improvements. Critical to this process is continuous self-monitoring to measure improvements in environmental performance. Typically, facilities perform a defined set of activities to produce a defined product(s) (i.e. within an identifiable boundary). Therefore, establishing target goals and monitoring improvements in environmental performance for facilities typically involves somewhat easily-defined performance metrics. The proposed guide asserts that: (1) NEPA "environmental impacts" can be treated as "environmental aspects" (which are the processes that could lead to environmental impacts) and therefore managed similarly in the context to an established EMS and (2) that NEPA commitments and mitigation measures can be "*implemented [?], tracked and monitored through the EMS*". We do not believe the environmental performance metrics or performance goals for NEPA are likely to be easily defined or measured. The difficulty in applying the EMS concept of continuous process improvement (as measured by the established environmental performance metrics) to NEPA is that different environmental "aspects" occur with each NEPA document. NEPA is a process applied in a dynamic environment where the boundaries are often defined by stakeholders rather than defined by the product.

From a transportation standpoint, the proposed guide would recommend that FHWA either develop an EMS around the NEPA process or incorporate its NEPA functions into the agency's overall EMS (if they have, or are developing, one). While either may be possible, the fact that FHWA delegates the production of NEPA documents to the state transportation agencies would likely result in those agencies performing many of the NEPA-related "plan-do-check-act" functions for the agency's EMS. Consequently, the adoption of the recommendations provided in this guide by FHWA could have significant impact on the states.

From our standpoint, it appears that incorporating NEPA processes into an overall agency EMS or developing an EMS around NEPA, would be a strained effort and one not likely to support the goal of streamlining NEPA. We do not see a benefit to the states in merging NEPA with an EMS, moreover, it will likely place additional burden on the state transportation agencies. The federal lead agencies have already established procedures for monitoring NEPA commitments and mitigation measures and these agencies have been providing guidance, training and oversight for NEPA compliance and process improvement. We believe the NEPA program (at least from a transportation context) is being successfully handled outside of the framework of an EMS.

The Virginia Department of Transportation appreciates the opportunity to preview and provide comment on the *Proposed Guide for Aligning the Complementary Processes of Environmental Management Systems and the National Environmental Policy Act*.